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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,214	09/19/2003	Wanda Richard	8574-US	7030
74475	7590	09/04/2008		
Gerber Products Company 12 Vreeland Road, 2nd Floor, Box 697 Florham Park, NJ 07932			EXAMINER HELM, CARALYNNE E	
			ART UNIT	PAPER NUMBER
			1615	
			MAIL DATE	DELIVERY MODE
			09/04/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/667,214

**Applicant(s)**

RICHARD ET AL.

**Examiner**

CARALYNNE HELM

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Arguments*

Applicant's arguments filed May 23, 2008 have been fully considered but they are not persuasive. The Applicant argues that Chaussee does not explicitly teach that the composition of their invention is to be used after a treatment that removes scaly layers and reduces the tendency of skin to scale. Further Applicant also argues that the amendment to the claims requiring the viscosity of the pretreatment composition to be from about 3450 to 3600 cps as measured by an RVT viscometer with a TA spindle rotating at 10 rpm is also not taught by the cited references. The Chaussee reference teaches the compositions are envisioned as being compatible with any number of personal care compositions (see column 2 lines 12-18). Such personal care compositions would certainly include those that impart their own degree of moisturization. The teachings of Chaussee by no means preclude the use of the taught composition following a shampoo or detergent that also contains moisturizing ingredients. Further, the concept/method where the use of a moisturizing cleanser is followed by a moisturizing after treatment (moisturizing shampoo followed by moisturizing conditioner; moisturizing facial cleanser followed by moisturizing lotion) is very well known in the art and thus would have been an obvious implementation of the method of Eriksen et al. in view of Chaussee. The method taught by Eriksen et al. contemplated a situation when sufficient removal of scales may not be achieved by the application of a pretreatment, mechanical scale removal, and cleansing with a shampoo, so one of ordinary skill in the art would have found it obvious to employ additional steps to facilitate further removal of scalp scales and reduce the tendency of the skin to form further scales. The composition of Chaussee provides a composition whose application performs such a function and thereby cures the deficiencies of Eriksen. The claim amendments adding limitations detailing the viscosity of the pretreatment are addressed in the rejections below; thus the arguments touting this claim limitation as delineating the instant invention over the cited prior art is moot.

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The lack of antecedent basis previously present in claims 11 and 12 has been corrected; therefore their rejection under 35 U.S.C. 112, second paragraph is hereby withdrawn.

The issues raised regarding indefinite language in claims 7 and 15 has been address; therefore their rejection under 35 U.S.C. 112, second paragraph is hereby withdrawn.

The following rejections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-2, 5-10 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eriksen et al. (U.S. Patent No. 6,043,202) in view of Chaussee (U.S. Patent No. 4,478,853).

Eriksen et al. teach a shampoo composition, oil composition (pre-treatment), and method for treating cradle cap (seborrhea dermatitis) in infants and small children (see abstract; instant claims 1 and 8) Eriksen et al. also teach a kit that include shampoo, oil pre-treatment, comb, sponge, brush and instructions for reducing or eliminating the condition of cradle cap (see column 4 line 66-column 11 line 10 and claim 20; instant claims 8-10, and 13). This kit is taught to include separate containers (cartons) of the shampoo and pre-treatment, along with the scale removal devices and instructions (see column 5 lines 1-3; instant claim 16). The viscosity of the pretreatment composition is not explicitly stated.; however, it would have been obvious to one of ordinary skill to optimize this parameter as a matter of routine experimentation at the time of the invention. Since the criticality of the particular claimed range of viscosity has not been demonstrated it would have been achieved by routine experimentation. Eriksen et al. go on to teach a method for treating cradle cap (mitigating presence the of scales) where 1) the oil pre-treatment is rubbed (massaged) into the scalp, thereby loosening the scales, 2) a comb is used to remove the scales, and 3) the scalp is shampooed (see column 2 line 40-column 3 line 30, column 9, lines 25-40, and column 10 lines 7-10; instant claims 1-2 and 5). In addition, Eriksen et al. also teach that this process can be repeated as needed, indicating that a single performance of the process may leave some scales on the scalp surface. Eriksen et al. does not specifically teach a separate moisturizer being used in the method or included in the claimed kit.

Chaussee teach a composition which imparts enhanced emolliency or moisturizing properties and provides extended protection against formation of dry, scaling skin or inhibiting scaling, flaking, drying and other causes of skin irritation (see column 2, lines 15-25 and column 3, lines 10-15). Chaussee et al. go on to teach

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particular components in this composition which include cocoa butter (see column 5, lines 65 and column 6, lines 5-65; instant claims 6 and 14) as well as the composition viscosity to be preferably from 2000 to 20,000 cps ((column 9, lines 25). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add the composition of Chaussee to the composition of Eriksen et al. such that the kit would also include a moisturizer to be applied after the shampooing step. Since Eriksen et al. contemplated a situation where the scalp treatment process would need to be repeated (e.g. remaining scalp scales), it would have been obvious to employ an additional remedy that promotes removal of scales from skin and reduces the tendency of the skin to scale. Application of a separate moisturizer after shampooing that performs these functions would therefore have been an obvious addition to the method of Eriksen et al. Furthermore, Chaussee teach variations in the viscosity of the moisturizing composition of their invention, particularly between 2,000 cps and 20,000 cps (see column 9 lines 23-26; instant claims 7 and 15). The viscosity of the moisturizing composition is a parameter that would have been well within the purview of a person of ordinary skill in the art at the time invention was made to optimize as a matter of routine experimentation. Thus the claimed viscosity range for the moisturizer would have been obvious. Therefore claims 1-2, 5-10 and 13-16 are obvious over Eriksen et al. in view of Chaussee.

Claims 1-4 and 8-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eriksen et al. in view of Chaussee, Dahle (U.S. PGPub No. 2002/0039591), and DesLauriers et al. (U.S. Patent No. 5,221,534).

As discussed above, Eriksen et al. in view of Chaussee make obvious a kit with an oil pre-treatment, shampoo, scale removing device, instructions, and moisturizer, as well as the method of use recited by instant claim 1 (see ***Claim Rejections - 35 USC § 103*** for claims 1-2, 5-10 and 13-16 above). Eriksen et al. in view of Chaussee do not teach the use of mineral oil or gelled mineral oil, in particular, in the taught oil pre-treatment. Dahle teach topical compositions that are suitable for treatment of skin disorders and specifically name cradle cap as one such disorder (see paragraph 4 lines

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1-2 and 6-7, paragraph 6; instant claims 1 and 8). Within these compositions, Dahle teaches that mineral oil is included as a suitable and preferred ingredient (paragraph 7 lines 1-3; instant claims 3 and 11). Thus it would have been obvious to one of ordinary skill in the art at the time of the invention to employ mineral oil in the oil pre-treatment taught by Eriksen et al. in view of Chaussee, to facilitate the treatment of cradle cap. Additionally, DesLauriers et al. teach gelled mineral oil for use in health and beauty aid compositions which give them desirable properties, more controlled consistency, and serve as a excellent vehicle for delivery to skin (abstract and column 2 lines 10-15, column 3 lines 8-23; instant claims 4 and 12). A broad range of viscosities for the gelled mineral oil containing compositions are taught so it would have been obvious to one of ordinary skill to optimize this parameter as a matter of routine experimentation at the time of the invention (see table 15). The criticality of the particular claimed range of viscosity has not been demonstrated so utilizing a viscosity within the claimed range is not beyond what would have been obvious to one of ordinary skill. It therefore would have been obvious to one of ordinary skill in the art to use the gelled form of mineral oil taught by DesLauriers et al. in the oil pre-treatment taught by Eriksen et al. in view of Chaussee and Dahle to take advantage of its physical properties in the composition. Further, since mineral oil in both the liquid and gelled form were known for their use in topical health/beauty aid compositions at the time of the invention, a person of ordinary skill would have had good reason to pursue them as options within their technical grasp and had a reasonable expectation of success. Therefore claims 1-4 and 8-12 are obvious over Eriksen et al. in view of Chaussee, Dahle, and DesLauriers et al.

### ***Conclusion***

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CARALYNNE HELM whose telephone number is (571)270-3506. The examiner can normally be reached on Monday through Thursday 8-5 (EDT).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Caralynne Helm/  
Examiner, Art Unit 1615

/MP WOODWARD/  
Supervisory Patent Examiner, Art Unit 1615